

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-001616

10/23/2011

JUDGE DAVID J. PALMER

CLERK OF THE COURT

S. Stewart

Deputy

IN RE THE MATTER OF
JOANNA GILBERT

AMIE SUE CLARKE

AND

DAVID ANTHONY ORTIZ

DAVID ANTHONY ORTIZ
UP

FAMILY COURT SERVICES-CCC

RULING

The Court convened an evidentiary hearing on August 24, 2011 on Petitioner/Mother's Petition to Modify Parenting Time and Child Support.¹ Respondent/Father filed a response in opposition.

The parties are the parents of daughter Grace (DOB: 07/29/2006), who is just beginning kindergarten.

The parties entered into an agreement, which was adopted as an order of the Court on August 19, 2010, which did not alter their previous agreement to Joint Legal Custody of Grace, but contained a parenting time plan which essentially gave each party a 6 month turn of being primary residential parent and having Grace during the week, with the other party during that time frame of having the child on weekends. They also entered into an agreement that was made an order of the Court that Grace would attend elementary school at Navajo Elementary School, middle school at Mohave and high school at Saguaro High School,

The primary impetus for Mother seeking the change is the fact that Grace is now attending kindergarten, and that Mother believes it is in her best interest to have a stable home

¹ Even though Mother's Pretrial Statement asked for modification of legal custody, Mother's petition and other subsequent pleadings did not raise this issue; the only issues that may be fairly divided by this Court are those of parenting time and child support.

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place during the week. Mother also believes that Grace attending school at Navajo is advantageous for Grace in that the after school program she now attends is close to that school, and enables her to spend time with her step sister after school.

Father opposes Mother's request. He believes the parties should continue the current parenting plan that was agreed to previously. He also wishes to enroll Grace at Hopi Elementary School, and in fact at one time did so without Mother's acquiescence or even her knowledge.² He believes that Navajo Elementary is sub-standard when compared with Hopi, and also spoke of a family member having a bad experience at Navajo.

Based upon the evidence presented, the Court makes the following findings and orders:

THE COURT FINDS that there has been a substantial and material change in circumstances that affects the welfare of the child in that Grace has gotten older and has begun kindergarten. Having made this finding, the Court must decide whether a change in parenting time would be in the child's best interest.

In this case, the Court finds that it is in the best interest of the minor child for the parenting time order to be modified. Even though this does involve a change in legal custody per se, the Court considered the factors set forth in A.R.S. §§25-403(A)/403.01(B) with respect to this parenting time change and finds as to those factors:

1. *The wishes of the child's parent or parents as to custody.*

Mother wishes to have Grace during the week, with Father to have her on alternate weekends on a weekday evening each week.

Father wishes to maintain the parties' previous agreement, which currently has him with the child during the week with Mother on weekends for a six-month period of time.

2. *The wishes of the child as to the custodian.*

No evidence was presented in this regard.

² Mother had to go to great lengths to get the minor child dis-enrolled from Hopi, including working through an attorney with the district to demonstrate to them that Father's actions were in violations of the orders in this case.

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3. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest.*

Grace interacts well with her step sister Tayler, and with Mother, as well as with Father.

4. *The child's adjustment to home, school and community.*

The child is reasonably well-adjusted to each of the two homes. She enjoys being with her step sister, and enjoys the after school program she attends with Tayler. Evidence indicated that for the short time she had been there as of the hearing date, she was enjoying school.

5. *The mental and physical health of all individuals involved.*

All involved appear to be in good physical and mental health.

6. *Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.*

Both parents are likely to allow such contact.

7. *Whether one parent, both parents, or neither parent has provided primary care of the child.*

Mother has provided more of the primary care of Grace and has been more involved in things such as medical and dental care.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.*

No agreements have been reached.

9. *Whether a parent has complied with chapter 3, article 5 of this title.*

According to the Court's file, Mother has attended the program and Father has not.

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10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.*

No evidence was submitted in this regard.

11. *Whether there has been domestic violence or child abuse as defined in A.R.S. 25-403.03.*

No evidence was submitted of any such occurrences in this case.

12. *Whether the joint custody arrangement is logistically possible?*

The Court finds that the parenting time plan proposed by Mother to allow Grace to attend school at Navajo and still allow Father significant parenting time is logistically possible.

IT IS ORDERED affirming the previous order of this Court granting to the parties joint legal custody of Grace, even though that order has not been sought to be modified by either party.

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child, to cooperate on health matters pertaining to each child and to keep one another reasonably informed regarding the status of each child's health. Both

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parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- It is in the furtherance of each child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. The parents shall develop their communication by utilizing e-mail as their primary method for communication. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the child outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Mediation Or Conciliation Services: The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Decision Making Authority- It is anticipated that parental decisions shall be required for major issues in raising the child and in meeting on-going needs. If/when they arise, the parents shall address the issues. Each shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.

PARENTING TIME

Based upon the evidence presented,

THE COURT FINDS it is in Grace's best interest to modify the parenting plan, given her school schedule.

IT IS ORDERED designating Mother as primary residential parent.

IT IS FURTHER ORDERED that Father's parenting time shall be as follows:

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Regular Access:

On alternating weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m., and every Wednesday from 5:00 p.m. until 8:00 p.m.

Holidays:

IT IS ORDERED that the parties are to alternate holidays as follows:

- Thanksgiving shall be spent with Mother in even-numbered years and with Father in odd-numbered years. During the years each parent has the child for Thanksgiving, she is to be with that parent from no later than 9:00 a.m. on Thanksgiving morning until 9:00 a.m. on the Friday following Thanksgiving, at which time the normal parenting time schedule takes effect.
- Christmas Eve shall be spent with Mother in even-numbered years and with Father in odd-numbered years beginning no later than 12:00 noon on Christmas Eve to be returned by 9:00 p.m. that evening. Christmas Day is to be spent with Father during even-numbered years and Mother during odd-numbered years.
- New Year's Eve shall be spent with Mother when New Year's Eve is an even-numbered year and with Father during odd-numbered years beginning at 12:00 noon on New Year's Eve and lasting until 12:00 noon on New Year's Day.
- MLK/Civil Rights Day weekend shall be spent with Father in odd-numbered years and with Mother in even-numbered years. As to this and all other holidays that fall on a three-day weekend, Father is to have the child on days he has the child from Friday evening until Monday at 6:00 p.m. at which time he is to return the child to Mother's house; when it is Mother's year, he/she is to have the child from Friday after school and throughout the weekend.
- Presidents Day weekend shall be spent with Father in even-numbered years and with Mother in odd-numbered years with the provisions described above for three-day weekends to apply.
- Memorial Day weekend shall be spent with Father in odd-numbered years and with Mother in even-numbered years per the schedule described above.

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- Fourth of July shall be spent with Mother in odd-numbered years and with Father in even-numbered years. If a parent has the child on that day that would not otherwise be their normal day with the children, they are to have the children from 9:00 a.m. until no later than 9:00 a.m. on July 5.
- Labor Day weekend shall be spent with Mother in even-numbered years and with Father in odd-numbered years.
- The child shall be with each parent on that parent's birthday, all day if the birthday falls on the weekend or a non-school day, or on weekdays from 5:00 p.m. until 8:00 p.m. if it is not their day, at which time the child shall go to whichever parent has that particular day in the normal schedule.
- The parent who has custody of the child on the child's birthday shall allow the other parent to have at least two hours with the child on that day.
- Mother's Day shall be spent with Mother from no later than 8:00 a.m. through the rest of the day.
- Father's Day shall be with Father from no later than 8:00 a.m. through the rest of the day until 6:00 p.m. at which time the child shall be returned to Mother.
- Halloween shall be with Father in odd-numbered years (from 5:00 p.m. until 9:00 p.m.) and Mother in even-numbered years during those same hours in the event that day does not fall on her normal parenting time.

Summer/Vacation:

Each party may have Grace during the summer vacation period for 7 consecutive, uninterrupted days upon 30 days notice to the other party. In the event of conflicting vacation schedule, Father's schedule shall take precedence in even-numbered years, and Mother's schedule shall take precedence in odd-numbered years.

During the winter break, Father may have Grace for the period from and including December 26 through December 30.

During even-numbered years, Father is to have Grace during fall break and Mother during spring break; during odd-numbered years, Father is to have Grace during spring break and Mother during fall break. Alternatively, if the parties mutually agree, they can split each spring and fall break equally, (e.g., Mother has Grace Monday morning

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through Wednesday at noon, Father has her Wednesday at noon through Friday at 6:00 p.m. at which time the normal schedule resumes.)

SCHOOL CHOICE ISSUE

The parties agreed in a stipulation that was made an order of the Court entered on August 16, 2010 that Grace would attend elementary school at Navajo, middle school at Mohave and high school at Saguaro.

Given the evidence presented,

THE COURT FINDS that Father has failed to establish any reason why the parties' agreement regarding school placement should be changed.

THE COURT FURTHER FINDS that it is in Grace's best interest to continue her schooling at Navajo given the current logistics of her school as testified to by Mother.

IT IS THEREFORE ORDERED affirming the Court's order of August 19, 2010 that Grace is to attend school at Navajo Elementary.

CHILD SUPPORT

THE COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

In applying these findings under the Arizona Child Support Guidelines,

THE COURT FURTHER FINDS that no deviation is appropriate regarding the obligation to pay child support.

IT IS THEREFORE ORDERED that Father shall pay to Mother as and for child support the sum of **\$387.50** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing August 1, 2011 by Wage Assignment.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

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IT IS FURTHER ORDERED that Father shall complete and submit to the Court the *Current Employer Information* form attached hereto.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, he has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503.I, the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

IT IS FURTHER ORDERED that both parties shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 55% by Father and 45% by Mother.

With regard to unreimbursed medical, dental, and vision expenses,

IT IS ORDERED that except for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment

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arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

Tax Deduction For Grace As A Dependent

IT IS ORDERED that the parties may claim the eligible dependent as follows: Mother in odd-numbered years and Father in even-numbered years.

IT IS FURTHER ORDERED that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the child for tax purposes, he shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that he receives, which shall be applied first towards Father's current child support obligation, and then towards any arrearage.

Exchange Of Income Information

IT IS FURTHER ORDERED that the parties shall exchange income information on every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

ATTORNEY FEES AND COSTS

Mother has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

- A. The Court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter or chapter 4, article 1 of this title. On request of a party or

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another court of competent jurisdiction, the Court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The Court may make these findings before, during or after the issuance of a fee award.

B. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the Court finds necessary to the full and proper presentation of the action, including any appeal.

C. The Court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Upon consideration of the foregoing,

THE COURT FINDS that there is no substantial disparity of financial resources between the parties.

THE COURT FURTHER FINDS that Father did not act unreasonably.

Accordingly,

IT IS ORDERED denying Mother's request for attorney fees and costs.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

DATED the 25th day of October 2011

/S/: HONORABLE DAVID J. PALMER

JUDGE OF THE SUPERIOR COURT

FILED: Exhibit Worksheet; Child Support Worksheet; Child Support Order

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All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

DAVID ANTHONY ORTIZ: Non IV-D Payment Instructions, Current Employer Information